

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

HOWARD K. STERN, as Executor of the
Estate of Vickie Lynn Marshall,
a/k/a Vickie Lynn Smith,
a/k/a Vickie Lynn Hogan,
a/k/a Anna Nicole Smith,

Plaintiff,

vs.

STANCIL SHELLEY,
a/k/a Ford Shelley,
G. BEN THOMPSON,
and John or Jane Doe 1-12 whose true names
are unknown,

Defendants.

CIVIL ACTION

FILE NO. 4:08-CV-02753-TLW

DEFENDANT G. BEN THOMPSON'S ANSWER TO PLAINTIFF

For his Answer and Affirmative Defenses to Plaintiff Howard K. Stern's Complaint for Libel (the Complaint), defendant G. Ben Thompson (Defendants), by and through his undersigned counsel, R. Scott Joye, states the following:

PRELIMINARY STATEMENT

1.

Defendant denies any allegations contained in paragraph 1 of the Complaint, that implies or infers any liability on his behalf for any alleged damages had by the Estate of Anna Nicole Smith.

THE PARTIES

1.

The Defendant is without sufficient personal knowledge to admit or deny the allegations contained in paragraph one of this complaint. Based upon documentation provided by the Plaintiff, attached to the Complaint in this matter, this Defendant will admit Stern appears to be the Executor of the Estate of Ms. Smith.

2.

Defendant admits the allegations contained in paragraph two of the Complaint.

3.

Defendant admits the allegations contained in paragraph 3 of the Complaint.

4.

Defendant admits the allegations contained in paragraph 4 of the Complaint.

5.

Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of the complaint.

6.

Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6 of the complaint.

7.

Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the complaint.

8.

The Defendant admits the allegations contained in paragraph 8 of the Complaint.

9.

The Defendant admits the allegations contained in paragraph 9 of the Complaint.

10.

The Defendant denies the allegations contained in paragraph 10 of the Complaint.

11.

The Defendant admits the allegations contained in paragraph 11 of the Complaint.

12.

The Defendant admits the allegations contained in paragraph 12 of the Complaint.

13.

The Defendant admits the allegations contained in paragraph 13 of the Complaint.

CHOICE OF LAW

14.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, except admit that the estate of Mrs. Smith is located in California.

15.

The Defendant admits the allegations contained in paragraph 15 of the Complaint.

16.

The Defendant admits the allegations contained in paragraph 16 of the Complaint.

17.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18.

The Defendant denies the allegation contained in paragraph 18 that Ms. Smith maintained a home in the Bahamas known as Horizons, but admit the Defendant owns a home in the Bahamas known as Horizons that Ms. Smith was permitted to live in.

Shelley, Thompson, and Mrs. Smith Were Involved in Contentious

Litigation over Horizons

19.

The Defendant admits that he was involved in a dispute with Ms. Smith over Horizons at the time of her death.

20.

The Defendant denies the allegations contained in paragraph 20 of the Complaint.

21.

The Defendant denies the allegations contained in paragraph 21 of the Complaint

22.

The Defendant admits the allegations contained in paragraph 22 of the Complaint.

23.

The Defendant denies the allegations contained in paragraph 23 of the Complaint.

24.

The Defendant admits the allegations contained in paragraph 24 of the Complaint.

25.

The Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 25 of the Complaint.

26.

The Defendant denies the allegations contained in paragraph 26 of the Complaint.

27.

The Defendant denies the allegations contained in paragraph 27 of the Complaint as stated.

28.

The Defendant denies the allegation contained in paragraph 28 of the Complaint.

29.

The Defendant denies the allegation contained in paragraph 29 of the Complaint.

30.

The Defendant is without sufficient knowledge to admit or deny the allegation contained in paragraph 30 of the Complaint.

31.

The Defendant is without sufficient personal knowledge to admit or deny the allegation contained in paragraph 31 of the Complaint.

32.

The Defendant is without sufficient personal knowledge to admit or deny the allegation contained in paragraph 32 of the Complaint.

33.

The Defendant denies the allegations contained in paragraph 33 of the Complaint.

34.

The Defendant denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

35.

The Defendant replies to the allegations contained in paragraph 35 as follows:

- a. Admit each and every allegation
- b. Without sufficient personal knowledge to admit or deny
- c. Admit each and every allegation
- d. Admit each and every allegation
- e. Deny each and every allegation
- f. Deny each and every allegation
- g. Deny each and every allegation
- h. Deny each and every allegation

The Defendant denies personal knowledge of any other items removed from the Horizons home.

36.

The Defendant denies the allegations contained in paragraph 36 of the Complaint.

37.

The Defendant denies the allegations contained in paragraph 37 of the Complaint.

38.

The Defendant denies the allegations contained in paragraph 38 of the Complaint.

39.

The Defendants denies the allegations contained in paragraph 39 of the Complaint.

40.

The Defendant denies the allegations contained in paragraph 40 of the Complaint.

41.

The Defendant denies the allegations contained in paragraph 41 of the Complaint.

42.

The Defendant denies the allegations contained in paragraph 42 of the Complaint.

43.

The Defendant denies the allegations contained in paragraph 43 of the Complaint.

44.

The Defendant denies the allegations contained in paragraph 44 of the Complaint.

45.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint.

Shelley Provided to the Media Personal and Private Items Belonging to the Estate

46.

The Defendant denies the allegations contained in paragraph 46 as stated.

Defendant admits some items of Ms. Smith began to appear in the media, however, denies knowledge as to who released them to the media or how they were obtained.

47.

The Defendant admits the allegations contained in paragraph 47 of the Complaint.

48.

The Defendant admits the allegations contained in paragraph 48 of the Complaint.

49.

The Defendant admits the allegations contained in paragraph 49 of the Complaint.

50.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint

51.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint.

52.

The Defendant denies the allegations contained in paragraph 52 of the Complaint.

53.

The Defendant denies the allegations contained in paragraph 53 of the Complaint.

54.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint.

55.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint.

56.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57.

The Defendant denies the allegations contained in paragraph 57 of the Complaint.

58.

The Defendant denies the allegations contained in paragraph 58 of the Complaint.

59.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

61.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint.

62.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint.

63.

The Defendant denies the allegations contained in paragraph 63 of the Complaint.

64.

The Defendant denies the allegations contained in paragraph 64 of the Complaint.

65.

The Defendant denies the allegations contained in paragraph 65 of the Complaint.

66.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint.

67.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint.

68.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint.

69.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint.

70.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint.

71.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint.

72.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint.

73.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint.

74.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint.

75.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Complaint.

76.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint.

77.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint

78.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint.

79.

The Defendant denies the allegations as stated in paragraph 79 of the Complaint.

80.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint.

81.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint.

82.

The Defendant denies the allegations contained in paragraph 82 of the Complaint.

83.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the Complaint.

84.

The Defendant denies the allegations contained in paragraph 84 of the Complaint.

85.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint.

86.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint.

87.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Complaint.

88.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint.

89.

The Defendant admits the allegations contained in paragraph 89 of the Complaint.

90.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint.

91.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint.

92.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Complaint.

COUNT ONE: CONVERSION

93.

Paragraph 93 is a statement and there is no need for response.

94.

The Defendant denies the allegations contained in paragraph 94 of the Complaint.

95.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Complaint.

96.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Complaint.

97.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Complaint.

98.

The Defendant denies each and every allegation (items a through g) contained in paragraph 98 of the Complaint.

99.

The Defendant denies the allegations contained in paragraph 99 of the Complaint.

100.

The Defendant denies the allegations contained in paragraph 100 of the Complaint.

101.

The Defendant denies the allegations contained in paragraph 101 of the Complaint.

102.

The Defendant denies the allegations contained in paragraph 102 of the Complaint.

103.

The Defendant denies the allegations contained in paragraph 103 of the Complaint.

With respect to the Wherefore clause, Defendant denies that the Estate is entitled to any relief, including a judgement against Defendants, costs, or other relief.

COUNT TWO: WRONGFUL TAKING OF ESTATE PROPERTY

(CAL. PROB. CODE § 850 et seq.)

104.

Paragraph 104 is a statement and no response is needed.

105.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint.

106.

The Defendant denies the allegations contained in paragraph 106 of the Complaint.

107.

The Defendant denies the allegations contained in paragraph 107 of the Complaint.

108.

The Defendant denies the allegations contained in paragraph 108 of the Complaint.

109.

The Defendant denies the allegations contained in paragraph 109 of the Complaint.

110.

The Defendant denies the allegations contained in paragraph 110 of the Complaint.

111.

The Defendant denies the allegations contained in paragraph 111 of the Complaint.

With respect to the Wherefore clause, Defendant denies that the Estate is entitled to any relief, including a judgement against Defendants, costs, or other relief.

**COUNT THREE: STATUTORY & COMMON LAW COMMERCIAL
APPROPRIATION OF RIGHT OF PUBLICITY
(CAL. CIV. CODE § 3344.1)**

112.

Paragraph 112 is a statement and no response is needed.

113.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 of the Complaint.

114.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 of the Complaint.

115.

The Defendant admits the allegations contained in paragraph 115 of the Complaint.

116.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Complaint.

117.

The Defendant denies the allegations contained in paragraph 117 of the Complaint.

118.

The Defendant denies the allegations contained in paragraph 118 of the Complaint.

119.

The Defendant denies the allegations contained in paragraph 119 of the Complaint.

120.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 of the Complaint.

121.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Complaint.

122.

The Defendant denies the allegations contained in paragraph 122 of the Complaint.

COUNT FOUR: UNJUST ENRICHMENT/RESTITUTION

123.

Paragraph 123 is a statement and there is no need for response.

124.

The Defendant denies the allegations contained in paragraph 124 of the Complaint.

125.

The Defendant denies the allegations contained in paragraph 125 of the Complaint.

126.

The Defendant denies the allegations contained in paragraph 126 of the Complaint.

127.

The Defendant denies the allegations contained in paragraph 127 of the Complaint.

128.

The Defendant denies the allegations contained in paragraph 128 of the Complaint.

129.

The Defendant denies the allegations contained in paragraph 129 of the Complaint.

COUNT FIVE: UNFAIR COMPETITION
(CAL. BUS. & PROF. CODE § 17200 *et seq.*)

130.

Paragraph 130 is a statement and there is no need for response.

131.

The Defendant denies knowledge or information sufficient to form a belief as to

the truth of the allegations contained in paragraph 131 of the Complaint.

132.

The Defendant denies the allegations contained in paragraph 132 of the Complaint.

133.

The Defendant denies the allegations contained in paragraph 133 of the Complaint,.

134.

The Defendant denies the allegations contained in paragraph 134 of the Complaint.

135.

The Defendant denies the allegations contained in paragraph 135 of the Complaint.

With respect to the Wherefore clause, Defendant denies that the Estate is entitled to any relief, including a judgement against Defendants, costs, or other relief.

**COUNT SIX: VIOLATION OF COMPUTER FRAUD AND ABUSE ACT
(18 U.S.C. § 1030(a)(5))**

136.

Paragraph 136 is a statement and there is no need for response.

137.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 137 of the Complaint.

138.

The Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138 of the Complaint..

139.

The Defendant denies the allegations contained in paragraph 139 of the Complaint.

140.

The Defendant denies the allegations contained in paragraph 140 of the Complaint.

141.

The Defendant denies the allegations contained in paragraph 141 of the Complaint.

142.

The Defendant denies the allegations contained in paragraph 142 of the Complaint.

143.

The Defendant denies the allegations contained in paragraph 143 of the Complaint.

With respect to the Wherefore clause, Defendant denies that the Estate is entitled to any relief, including a judgement against Defendants, costs, or other relief.

COUNT SEVEN: CIVIL CONSPIRACY

144.

Paragraph 144 is a statement and no response is needed.

145.

The Defendant denies the allegations contained in paragraph 145 of the Complaint.

146.

The Defendant denies the allegations contained in paragraph 146 of the Complaint.

147.

The Defendant denies the allegations contained in paragraph 147 of the Complaint.

With respect to the Wherefore clause, Defendant denies that the Estate is entitled to any relief, including a judgement against Defendants, costs, or other relief.

AFFIRMATIVE DEFENSES

By alleging the Affirmative Defenses set forth below, The Defendant is not in any way acknowledging or conceding that he has the burden of proof for any issue as to which applicable law places the burden on Plaintiff.

FIRST AFFIRMATIVE DEFENSE

1.

Plaintiff's Complaint fails to state a cause of action, in whole or in part, upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2.

Plaintiff's claims are barred, in whole or in part, by the doctrine of un-clean

hands.

THIRD AFFIRMATIVE DEFENSE

3.

The statements complained of in the Complaint are not actionable assertions of fact capable of being proven true or false, and thus cannot give rise to any claim against The Defendants.

FOURTH AFFIRMATIVE DEFENSE

4.

The relief sought in the Complaint is barred by the First and Fourteenth Amendments to the Constitution of the United States.

FIFTH AFFIRMATIVE DEFENSE

5.

The relief sought in the Complaint is barred by the Constitution of the State of California.

SIXTH AFFIRMATIVE DEFENSE

6.

The statements complained of in the Complaint are privileged under the common law.

SEVENTH AFFIRMATIVE DEFENSE

7.

. The actions complained of concern a public figure and were published without

the applicable degree of fault, including without negligence, gross irresponsibility, actual malice, or fault of any kind.

EIGHTH AFFIRMATIVE DEFENSE

8.

Plaintiff's claims fail because any injury or damages suffered by Plaintiff, which injury or damages The Defendants expressly deny, were proximately or directly caused, in whole or in part, by the actions of Plaintiff, or by the actions of others over whom The Defendants had no control.

NINTH AFFIRMATIVE DEFENSE

9.

Plaintiff's claims fail because he failed to mitigate any injury or damages, which injury or damages The Defendants expressly deny.

TENTH AFFIRMATIVE DEFENSE

10.

Plaintiff's claims fail because he has failed to allege facts sufficient to warrant the imposition of punitive damages.

ELEVENTH AFFIRMATIVE DEFENSE

11.

Plaintiff's claim for punitive damages is barred by the Constitution of the United

States, the Constitution of the State of South Carolina, the Constitution of the State of California, and the common law.

TWELFTH AFFIRMATIVE DEFENSE

12.

The Defendants reserve the right to amend their Answer and Affirmative Defenses to assert such additional defenses as may later become available or apparent to them. Nothing stated herein constitutes a concession that The Defendants bear any burden of proof on any issue on which they would not otherwise bear such burden.

WHEREFORE, The Defendants respectfully seek an Order of this Court as follows:

1. Dismissing the Complaint in its entirety and with prejudice;
2. Awarding The Defendants their costs and disbursements incurred in defending this action, and their fees; and
3. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted this ____ day of September, 2008.

By: s\ R. Scott Joye

R. Scott Joye
Federal I.D. No. 7310
Attorney for Defendant

JOYE, NAPPIER & RISHER, LLC
3575 Highway 17 Business
Murrells Inlet, SC 29576